IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 37717 of 2004(M)

AGAINST THE ORDER DATED 08/11/2004 IN IA.1700/03 IN OS.179/1997 of MUNSIFF COURT, THALASSERY

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PETITIONER:

AJAYAKUMAR. K., S/O. KANNAN,
NO OCCUPATION, KANOTH HOUSE,
NEAR ABHAYA NIKETHAN, EDAKKAD AMSOM,
THOTTADA DESOM, KANNUR DISTRICT.

BY ADV. SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA

RESPONDENTS:

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1. KANAKALATHA @ UMAIBA,
W/O. HAMSA, NEAR THANIYOT TEMPLE,
KANOTH HOUSE, THOTTADA.

2. K. GOWRI, D/O. BHASKARAN,
BEEDI WORKER, KANOTH HOUSE, THOTTADA P.O.

3. K. INDIRA, D/O. KANNA,
MANIKKOTH HOUSE, ELAYAVOOR AMSOM,
KIZHUTHALLI DESOM, KANNUR.

4. K. LALITHA, W/O. HARIDASAN,
PARAMBIL HOUSE, EDAKKAD AMSOM,
KIZHUTHALLI DESOM, KANNUR.

5. K. VIMALA, W/O. REMASHAN,
NO OCCUPATION, ANUGRAHA, A.K.G. ROAD,
NEAR K.S.E.B., ELAYAVOOR AMSOM,
CHOVVA DESOM, KANNUR.

6. K. BHARATHI, W/O. MANDEN PURUSHOTHAMAN,
MANDEN HOUSE, NEAR ARAYAMBETH VAYANASALA,
KOTTALI, KANNUR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE COMMISSION REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER DT.05.12.2000.

EXT.P2 : TRUE COPY OF THE AFFIDAVIT IN IA NO.308 OF 2000 IN OS NO.179 OF 1997 FILED BY THE 1ST RESPONDENT.

EXT.P3 : TRUE COPY OF THE COUNTER STATEMENT DT.AUGUST, 2004 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, THALASSERY.

EXT.P4 : TRUE COPY OF THE ORDER DT.8.11.2004 IN IA NO.1700 OF 2003 IN IA NO.308 OF 2000 IN OS NO.179 OF 1997 ISSUED BY THE MUNSIFF COURT, THALASSERY.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 37717 OF 2004

Dated this the 28th day of May, 2007

JUDGMENT

Ext.P4 order of the Munsiff, Thalassery by which Ext.P1 commissioner's report submitted by a commissioner who was appointed in final decree proceedings has been set aside is under challenge by the 6th defendant. The 6th defendant had filed very serious objections to the application submitted by the 1st respondent who was the 5th defendant in the suit. It is a cryptic order which has been passed by the learned Munsiff. But a reading of the said order will show that the circumstance that no counter evidence was adduced by the petitioner weighed with the learned Munsiff for issuing the direction in the present fashion. Even though the 1st respondent has been served with notice, she has not entered appearance before this Court.

Having regard to the submissions of Sri.K.C.Santhoshkumar, learned counsel for the petitioner, I am of the view that at least one opportunity ought to be afforded to the petitioner to adduce evidence in IA No.1700 of 2003. But I am inclined to grant the same only on condition. Ext.P4 will stand set aside on condition that the petitioner pays to the 1st respondent either directly or through the counsel appearing for her in the court below within two weeks of his receiving

copy of this judgment, a sum of Rs.750/-. If payment is not made as above, Ext.P4 will stand confirmed and the Writ Petition will stand dismissed. If payment is made as directed above, the learned Munsiff will re-post IA No.1700 of 2003 for further enquiry and will permit at least one opportunity to the petitioner for adducing whatever counter evidence at his command.

PIUS C. KURIAKOSE, JUDGE

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